

Remarks

Claims 1-6 and 9-31 are pending in this application. The Examiner rejected claims 1-6 and 9-31 under 35 U.S.C. § 112, ¶ 2. Claims 1, 2, 4, 5, 9-11, 13, 14, 18-22 and 25-31 were rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 4,943,432 to Biener. Claims 3, 6, 12, 15-18 and 21-24 were rejected under 35 U.S.C. § 103(a) as obvious over Biener in view of U.S. Patent No. 4,749,563 to Georgalas.

Applicants respectfully thank the Examiner for her time and patience during the teleconference of November 18, 2002. The rejections over Biener were discussed, as well as the Examiner's rejection of claims 2 and 29-31 concerning the use of the word "clear." The Examiner agreed that the word "clear" in claims 2 and 29-31 was sufficiently definite to one of ordinary skill in the art and that the rejection of claims 2 and 29-31 under 35 U.S.C. § 112, ¶ 2 on those grounds would be withdrawn. The Applicants thank the Examiner for her reconsideration.

Applicants respectfully address the Examiner's other rejections as follows.

The Examiner rejected claims 1-6, 9-26 and 29 on the grounds that "TDS" is not defined. Applicants have amended those claims to recite the phrase "total dissolved salt," as defined in the specification, page 6, lines 7-8. Therefore, Applicants respectfully submit these rejections should be withdrawn.

The Examiner rejected claims 1-6, 9-26 and 29 on the grounds that the term "resembling Dead Sea water" is indefinite. Applicants respectfully disagree and point out that the

specification identifies the composition of water which will, by definition, “resemble” Dead Sea water. See specification, page 6, lines 11-21. In light of the ion composition defined in the specification, Applicants respectfully assert that the phrase “resembling” is definite to one with ordinary skill in the art. Applicants respectfully submit these rejections should be withdrawn.

Finally, the Examiner rejected claims 25-28 and 30-31 on the grounds that the phrase “Dead Sea water” is indefinite. Applicants respectfully disagree. The phrase indicates water actually obtained from the Dead Sea (*i.e.*, actual Dead Sea water). Applicants know of no other way to identify such water. Applicants respectfully submit these rejections should be withdrawn.

Applicants’ invention is directed to a gel comprising a high concentration of Dead Sea water (or similarly constituted water) in comparison to the prior art. None of the art discloses, teaches, motivates or suggests a composition having the concentration of Dead Sea water having the values presented herein, and none has been able to use such concentrations to form a clear liquid gel. In addition, no cited art teaches a gel having the composition claimed herein wherein the principal ingredient is actual Dead Sea water.

The Examiner has cited Biener against the independent claims of the present application. Applicants respectfully submit that Biener does not render any of the independent claims of the application obvious. In particular, Biener’s disclosure is limited in the following respects. First, Biener discloses a composition having salt water not exceeding 34% of the total mixture. (*See* Biener, col. 3, l. 46-61) (identifying 34% as an upper limit and 26% as the preferred upper limit).

That limit is outside of the claimed range, and is far below the upper limit of 80% recited herein. Second, Biener expressly teaches away from the use of actual Dead Sea water. (*See id.*, col. 1, l. 42-col. 2, l. 9) (noting the disadvantages and undesirability of actual Dead Sea water); (*id.*, col. 2, l. 44-49) (noting the impurities in actual Dead Sea water).

Accordingly, claims 1, 5, 27 and 28 are not obvious in light of any of the prior art. Obviousness requires that each and every element of the claim be present in a combination of references along with a teaching, motivation and suggestion of success in combining them. *See* MPEP § 2143. The motivation to combine reference must be “clearly and particularly” taught in the references. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). A modification to a reference that renders a reference unsatisfactory for its intended purpose is not obvious. *See* MPEP § 2143.01. Ranges encompassed in the prior art may nevertheless be non-obvious if the claimed ranges are critical to the invention. *See* MPEP § 2141.05, II.A. Finally, in determining obviousness, the Examiner “cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies.” *In re Sang Su Lee*, 277 F.3d 1338 (Fed. Cir. 2002).

None of the art cited by the Examiner discloses a gel composition comprising 34.1%-80% w/w water with an ion concentration resembling Dead Sea water. Concentrations of salt water used in Biener is limited to 34%, and preferably not higher than 26%. Thus, use of ranges claimed in claims 1 and 5 is nowhere disclosed or suggested by Biener or any other art.

Second, none of the art cited by the Examiner discloses the use of actual Dead Sea Water in the claimed concentrations. Biener teaches that actual Dead Sea water is undesirable, and therefore lacks any motivation to use actual Dead Sea water. Biener also discloses that the water disclosed therein is superior to actual Dead Sea water because treatments may be uninterrupted. Thus, one would have no expectation of success in using actual Dead Sea water based upon Biener. Thus, claims 27 and 28 are not obvious in view of Biener.

Because claims 1, 5 and 27-28 are patentable, claims 2-4, 6-26 and 29-31 are patentable as dependent from patentable base claims. *See* MPEP § 2143.03; *In re Fine*, 837 F.2d 1065 (Fed. Cir. 1988).

Applicant respectfully submits that the amendment herein demonstrates Applicant's preference for particular language and, notwithstanding anything to the contrary, are not intended to be amendments related to patentability. Furthermore, Applicant respectfully submits that the amendments herein merely add language of equivalent scope, and that nothing herein is intended to narrow the scope of any of the claims.

Applicants respectfully request that the present Amendment be entered. The amendments to the claims will require no additional search by the Examiner because the claimed ranges were already within the parameters searched by the Examiner previously. Moreover, the amendments herein place the application in better position for appeal, could not have been presented sooner in light of the new rejections over Biener, and put the application in condition for allowance. Entry pursuant to 37 C.F.R. § 1.116 and reconsideration are respectfully requested.

The Commissioner is hereby authorized to charge any additional fees (or credit any overpayment) associated with this communication to our Deposit Account No. 13-0019. If a fee is required for an extension of time under 37 C.F.R. §1.136 not accounted for above, such extension is requested and such fee should also be charged to our Deposit Account.

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Respectfully submitted,



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